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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/156108

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 17, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on May 06, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that additional personal care worker (PCW) hours may be paid for by the Medicaid program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Marcie Oakes, RN

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. A prior authorization (PA) request seeking Medicaid payment for 42.00 hours (or 168 units with each unit = 15 minutes) per week of personal care services and 28 units or 7 hours for PCW travel

time was filed on behalf of Petitioner on or about January 16, 2014. The total cost was noted to be \$207,760.00. The requesting provider is [REDACTED] Inc. The request was for 53 weeks.

3. Petitioner is 50 years of age (DOB 03/10/64). She lives alone in the community. The diagnoses noted on the first page of the PA request are chronic pain syndrome and osteoarthritis - unspecified leg. Other documentation in the record indicates that Petitioner has COPD and becomes breathless with any activity, that she is unsteady on her feet and suffers from muscle spasms. She uses a wheeled walker in her home. She has had gastric bypass surgery. She has memory issues. She takes a number of medications.
4. The requested travel time was approved. The Department also approved a modified amount of personal care hours for Petitioner; rather than the requested 42 hours per week the Department approved 17 hours per week with the approved tasks and times as follows (per Ex # 3 at page 8):

• -Bathing	210 min/wk
• -Dressing – upper/lower	140 min/wk
• -Grooming	210 min/wk
• -Transfers	210 min/wk
• -Services incidental to these tasks	
• (1/3 of above total)	256.67 min/wk

Total: 1023.67 min [sic s/b 1026.67 min] or 17 hrs. or 68 units (rounded).

5. It appears from the Department's February 25, 2014 approval letter that the Department also approved 96 units of PCW services to be used as needed during the course of the 53 weeks.

### DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
  - (b) Meets the following standards:
    1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
    2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
    3. Is appropriate with regard to generally accepted standards of medical practice;
    4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
    5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
    6. Is not duplicative with respect to other services being provided to the recipient;
    7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
    8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
    9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.
- Wis. Admin. Code, §DHS 101.03(96m).*

Also, the following Administrative Code provision is relevant here:

**DHS 107.112 Personal care services. (1) COVERED SERVICES.** (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

*Wis. Admin. Code, §DHS 107.112(1)(a) and (b).*

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence".

This legal standard of review means, simply, that “it is more likely than not” that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a 9 page letter (Ex # 3) that detailed its rationale for modifying this request for personal care services. Essentially, it indicates that the Department did not find that medical necessity had been demonstrated for any additional time. Special note is made of the fact that the provider asked for 168 units (42 hours) on the prior authorization request though the initial personal care screening tool (PCST) results prior to Department review suggested 94 units or 23.5 hours per week of PCW services are sufficient and that the PCST found Petitioner to be independent as to toileting.

Petitioner testified that she needs more help with transfers than allocated, in particular because she needs help with getting on and off of the toilet. She also indicated that she is not very mobile. She testified that she has irritable bowel syndrome, which necessitates additional clothing changes. Petitioner is very concerned with her memory, indicating that she forgets food cooking on the stove and burns the food and pans. She also forgets to take her medications. She allows that time allocated for bathing and grooming is sufficient. Nonetheless, she really would like a live-in assistant. Finally, Petitioner expressed the need for two pieces of medical equipment – a raised toilet seat and a wheeled walker with a seat.

There is a bit of a conflict between the provider submission and Petitioner testimony. As an example, Petitioner indicates she needs some assistance with additional clothing changes due to IBS issues but the submission says nothing about that. I am sustaining the Department denial. The evidence is just not sufficient at this time to add PCW hours. I respectfully suggest that Petitioner talk to her provider about the raised toilet seat and wheeled walker with a seat as well as strategies for dealing with memory issues - as an example, an electronic medication dispenser. Finally, I note that a new prior authorization request can be filed especially if circumstances change and/or better documentation is available.

**NOTE: The provider will not receive a copy of this Decision. It is suggested that Petitioner share it with the provider.**

### **CONCLUSIONS OF LAW**

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that additional hours of personal care services meets standards necessary for payment by Medicaid at this time.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

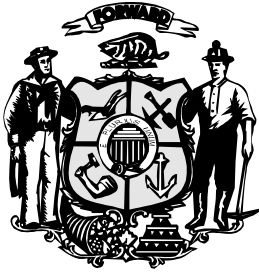
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 4th day of June, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 4, 2014.

Division of Health Care Access and Accountability